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Rockhill Insurance Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROCKHILL INSURANCE
COMPANY,

Plaintiff,

v.

SECURITY NATIONAL
INSURANCE COMPANY; and
LIBERTY MUTUAL INSURANCE
COMPANY,

Defendants.

Case No. 3:21-CV-04245

**COMPLAINT FOR
DECLARATORY RELIEF,
EQUITABLE INDEMNITY, AND
CONTRIBUTION**

COMES NOW ROCKHILL INSURANCE COMPANY (“Rockhill”) and
complains against defendants as follows:

I. PARTIES

1. Plaintiff Rockhill Insurance Company (“Rockhill”) is an insurance
company incorporated in the state of Arizona with its principal place of business in
Columbus, Ohio.

2. Defendant Security National Insurance Company is an insurance
company incorporated in the state of Delaware with its principal place of business
in Dallas, Texas.

1 3. Defendant Liberty Mutual Insurance Company is an insurance
2 company incorporated in the state of Massachusetts with its principal place of
3 business in Boston, Massachusetts.

4 **II. JURISDICTION AND VENUE**

5 4. This Court has subject matter jurisdiction over this action pursuant to
6 28 U.S.C. §1332. This is a civil action between citizens of different states and the
7 amount in controversy exceeds \$75,000, exclusive of interests and costs.

8 5. Pursuant to 28 U.S.C. §1391, this Court is the proper venue for this
9 action because a substantial part of the events or omissions which give rise to this
10 case occurred in San Francisco, California. Venue is also proper because the
11 property and construction that are the subject of the dispute are located and took
12 place in this jurisdiction.

13 **III. FACTUAL ALLEGATIONS**

14 **A. The Construction**

15 6. Jeremy Stoppelman and Presidio Gate, LLC, contracted with Plath &
16 Company, Inc. (“Plath”) to perform residential construction at 2320 Lyon Street in
17 San Francisco, California.

18 7. Plath retained various subcontractors and suppliers to construct the
19 home, including Thameside Masonry, Inc. (“Thameside”), and Paul West Heating,
20 Inc. (“Paul West”).

21 8. Plath subcontracted Thameside for work including masonry work on
22 the exterior of the structure and required Plath to be covered as an additional
23 insured on insurance covering the latter for the work. Thameside’s work included
24 patio and roof pavers and glass guardrails.

25 9. Plath subcontracted Paul West for work on the property’s heating,
26 vent, and air conditioning system (“HVAC”) and required Plath to be covered as
27 an additional insured on insurance covering the latter for the work.
28

B. The Insurance Carriers

10. During the relevant policy periods, Plath and its subcontractors carried liability insurance as follows:

- Plath was insured by Rockhill Insurance Company (“Rockhill”);
- Thameside was insured by Security National Insurance Company (“SNIC”); and
- Paul West was insured by Liberty Mutual Insurance Company ((Liberty Mutual)).

11. Each of the subcontractors’ insurers’ policies provides Additional Insured coverage that extends on a primary basis to anyone whom their insured, as a subcontractor, is obligated to name as an additional insured. Terms of that coverage require each insurer to defend and indemnify such an additional insured in the event that the additional insured is sued for property damage allegedly occurring during the policy period and arising in whole or in part from the subcontractor’s negligence.

12. Each of the subcontractors’ insurers’ policies provide liability coverage for damage arising in whole or in part from the respective subcontractors’ work to property other than their own work.

13. No exclusions apply to the coverage provided by either of the subcontractors’ insurance policies.

C. The Arbitration

14. Stoppelman and Presidio Gate, LLC (“Claimants”) instituted an arbitration against Plath, Thameside, and Paul West for damages resulting from alleged defects in the construction at the subject property.

15. Claimants have alleged that defects in the sub-contractors’ work has resulted in damage to property other than their own work.

1 16. Claimants allege damages exceeding \$3,857,026.

2 17. Rockhill has incurred defense expenses exceeding \$400,000 in
3 defending Plath in the arbitration.

4
5 **D. Defense and Indemnification**

6 18. The subcontractors' insurers' policies require them to defend Plath on
7 a primary basis if there is any potential for coverage for claimants' allegations.

8 19. Claimants' allegations create at least a potential for coverage under
9 the subcontractors' insurers' policies.

10 20. The subcontractors' insurers' policies require them to defend Plath.

11 21. The subcontractors' insurers' policies require them to indemnify Plath
12 on a primary basis to the extent that the subject property damage resulted from the
13 subject subcontractor's work.

14 22. Plath has demanded that SNIC and Liberty Mutual defend and
15 indemnify it with relation to Claimants' damages and the arbitration.

16 23. SNIC and Liberty Mutual have failed to provide or agree to provide
17 defense and indemnification as required by the subject policies.

18 24. The subcontractors' insurers' failure to provide or agree to provide the
19 required defense and indemnification has required Rockhill to defend and,
20 potentially, to indemnify.

21 **FIRST CAUSE OF ACTION**

22 **(DECLARATORY RELIEF against All Defendants)**

23 25. Complainant incorporates by reference here all allegations previously
24 made in this complaint.

25 26. An actual controversy has arisen and now exists between Rockhill and
26 defendants, and each of them, regarding the rights, obligations and duties of each
27 defendant to defend and indemnify Plath.

27. Complainant contends that defendants are liable for defense and indemnification of Plath as required by the respective insurance policies.

28. Each defendant denies and/or has failed to provide defense and indemnification of Plath as required by the respective insurance policies.

SECOND CAUSE OF ACTION

(EQUITABLE INDEMNITY Against All Defendants)

29. Complainant incorporates by reference here all allegations previously made in this complaint.

30. Complainant is informed and believes and thereon alleges that defendants, and each of them, owes a duty to defend and indemnify Plath as an additional insured.

31. Defendants have failed to defend or indemnify Plath.

32. The actions and inaction of Defendants, and each of them, have caused complainant to bear the burden of defense and indemnification that is otherwise owed by Defendants.

33. Complainant is entitled to full and complete indemnity from the defendants for all sums incurred and to be incurred in defending and indemnifying Plath.

THIRD CAUSE OF ACTION

(CONTRIBUTION against All Defendants)

34. Complainant incorporates by reference here all allegations previously made in this complaint.

35. Insofar as each of defendants' policies require that defendants defend and indemnify Plath, complainant is entitled to contribution and/or partial indemnity from defendants for the sums it has and will incur in defending and indemnifying Plath.

WHEREFORE, complainant pray as follows:

1. For a declaration that the Defendants are obligated to defend and indemnify Plath;
2. For indemnity for all sums incurred or to be incurred in defending and indemnifying Plath, or, alternatively, for contribution to those sums;
3. For costs of suit incurred herein; and
4. For such other and further relief as this Court deems just and proper.

DATED: May 28, 2021

POLLAK, VIDA & BARER

/s/ Hamed Amiri Ghaemmaghami

By:

Scott J. Vida

Hamed Amiri Ghaemmaghami

Attorneys for Plaintiff, Rockhill Insurance
Company